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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/713,726
Filing Date: November 13, 2003
Appellant(s): DIETZ ET AL.

J. B. KRAFT
REGISTRATION No.: 19,226
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 21 July 2008 appealing from the Office action mailed

21 February 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,958,008   POGREBISKY et al.   9-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-6 and 17-25 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As per claims 1-6, the instant claims are directed to software *per se*. The "means... for prioritizing" and "means for applying" are not defined in the specification as exclusively hardware. Further, the use of the word "system" do not inherently mean that the claim is directed to a machine. Only if at least one of the claimed elements of the system is a physical part of a device can the system as claimed constitute part of a device or a combination of devices to be a machine within the meaning of 35 U.S.C. 101.

Claims 17-20 lack the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are also clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of

matter. As such, they fail to fall within a statutory category. They are, at best, functional

descriptive material *per se.*

Descriptive material can be characterized as either "functional descriptive material" or

"nonfunctional descriptive material." Both types of "descriptive material" are nonstatutory when

claimed as descriptive material *per se*, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional

descriptive material is recorded on some computer-readable medium, it becomes structurally and

functionally interrelated to the medium and will be statutory in most cases since use of

technology permits the function of the descriptive material to be realized. Compare *In re Lowry*,

32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994)

Merely claiming nonfunctional descriptive material, i.e., abstract ideas, stored on a

computer-readable medium, in a computer, or on an electromagnetic carrier signal, does not

make it statutory. See *Diehr*, 450 U.S. at 185-86, 209 USPQ at 8 (noting that the claims for an

algorithm in *Benson* were unpatentable as abstract ideas because "[t]he sole practical application

of the algorithm was in connection with the programming of a general purpose computer").

Here, the "descriptive material" is nonfunctional and is not recorded on a storage

medium. Even if the preamble carried patentable weight, which Applicant admits that it does not

(see Appeal Brief p. 12, ll. 7-9), a hypertext document is not "functional" by itself. Likewise, a

hypertext tag alone is not "functional." Rather, it is printed material.

As per claims 21-25, a "computer useable medium" is not statutory under 35 U.S.C. 101.

The specification does not define the term, thus the Examiner must apply the broadest reasonable

interpretation to it. As such, it appears that it would include non-statutory carrier waves. The

preferred language for such a claim is "A computer-readable <u>storage</u> medium containing

instructions that when executed by a processor cause it to perform" the claimed steps.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-11 and 17-25 are rejected under 35 U.S.C. 102(b) as being anticipated by

Pogrebisky et al., U.S. 5,958,008 (Pogrebisky).

1. Pogrebisky teaches "*In a World Wide Web (Web) communication network with user*

access via a plurality of data processor controlled interactive receiving display stations for

displaying received hypertext Web documents, transmitted from source sites on the Web,

including at least one display page containing text, images and a plurality of embedded

hyperlinks, each hyperlink being user activatable to access and display a respective linked

hypertext Web document from source sites on the Web, a system for controlling access activity

from activated hyperlinks and their respective Web document source sites comprising," see col.

1, line 66 – col. 2, line 9, "a software package ('Web site analysis program') is provided which

includes a variety of features for facilitating the management and analysis of Web sites. In the

preferred embodiment, the program runs on a network-connected PC under the Windows® 95 or

Windows® NT operating system, and utilizes the standard protocols and conventions of the

World Wide Web ('Web')."

Pogrebisky teaches "*means at said source sites for prioritizing said plurality of embedded hyperlinks in a Web document*," see Figs. 4, 12, col. 16, lines 27-44, "FIG. 4 illustrates a split-screen mode which allows the user to view a graphical representation of the Web site in an upper window 76 while viewing a corresponding textual representation (referred to as 'List View') in a lower window 78... Each line of text displayed in the List View window 78 represents one node of the site map, and includes various information about the node," and col. 16, line 59 – col. 17, line 7, "In addition, by clicking on the headers 82 of the separation bar 80, the user can view the listed URLs in a sorted order," where the claimed "source site" is the referenced "client computer" of Fig. 12, the claimed "prioritizing" is the referenced "clicking on the headers," and the claimed "embedded hyperlinks in a Web document" are the referenced "listed URLs."

Pogrebisky teaches "*and means for applying said prioritization in the determination of the order in which the Web documents linked to the activated embedded hyperlinks in said Web document are to be accessed*," see Fig. 4 and col. 16, line 59 – col. 17, line 7, "Likewise, whenever the user selects a line in the List View window 78, the corresponding node is automatically highlighted in the upper window 76... For example, if the user clicks on the 'in links' header, Astra will automatically sort the list of URLs according to the number of incoming links, and then display the sorted listing in the List View window 78" where the claimed "applying" is the referenced "automatically sort[ing]," the claimed "order" is the referenced sorting "according to the number of incoming links," the claimed "Web documents" are the referenced nodes in Fig. 4, e.g. "proxy.pdf," and the claimed "hyperlinks" are "accessed" when the referenced "user selects a line in the List View window."

2. Pogrebisky teaches "*The Web communication network of claim 1 further including: a document source site network comprising: a plurality of the source sites from which said Web documents linked to said prioritized hyperlinks are accessed,*" see Fig. 11 and col. 23, lines 26-47, "Depicted in the drawing is a client computer 92 communicating with a Web site 113 over the Internet 110 via respective TCP/IP layers 108, 178."

Pogrebisky teaches "*and a service manager server system for accessing Web documents linked to said prioritized hyperlinks,*" see Fig. 11 and col. 23, lines 26-47, "The Web site 113 includes a Web server application 112 which interoperates with CGI scripts (shown as layer 180) to generate Web pages on-the-fly."

Pogrebisky teaches "*wherein said means for applying said prioritization is at said service manager server system,*" see Fig. 11 and col. 23, lines 26-47, "As illustrated, the Web browser 170 is configured to use the Astra application 94 as an HTTP-level proxy. Thus, all HTTP-level messages (client requests) generated by the Web browser 170 are initially passed to Astra 94, which in-turn makes the client requests on behalf of the Web browser."

3. Pogrebisky teaches "*The Web communication network of claim 1 wherein said each of said Web documents further includes a hypertext markup language tag associated with each of said prioritized hyperlinks indicative of the priority level of the associated hyperlink,*" see Fig. 4, col. 6, lines 52-65, "During a document authoring stage, the HTML codes (referred to as 'tags') are embedded within the informational content of the document. When the Web document (or 'HTML document') is subsequently transmitted by a Web server to a Web browser, the codes are interpreted by the browser and used to parse and display the document," and col. 16, line 59 – col. 17, line 7, "In addition, by clicking on the headers 82 of the separation bar 80, the user can

view the listed URLs in a sorted order," where the claimed "tag" could be the tag <A

HREF="URL">, which is "associated with each... hyperlink," and "indicat[es]" the priority of

the hyperlinks when they are sorted by the "URL" column.

4. Pogrebisky teaches "*The Web communication network of claim 3 further including*

means associated with a source site of a Web document enabling an interactive user at the

source Web site to designate a priority level for each of the hyperlinks," see Fig. 4 and col. 16,

line 59 – col. 17, line 7, "by clicking on the headers 82 of the separation bar 80, the user can

view the listed URLs in a sorted order."

5. Pogrebisky teaches "*The Web communication network of claim 4 wherein said means*

for designating a priority level for each of said hyperlinks are enabled to change any previously

designated priority levels for said hyperlinks," see Fig. 4 and col. 16, line 59 – col. 17, line 7,

"For example, if the user clicks on the 'in links' header, Astra will automatically sort the list of

URLs according to the number of incoming links, and then display the sorted listing in the List

View window 78."

6. Pogrebisky teaches "*The Web communication network of claim 5 wherein said changes*

in any previously designated priority levels are applicable to the priority levels in previously

distributed copies of said Web document," see Fig. 4 and col. 16, line 59 – col. 17, line 7, "For

example, if the user clicks on the 'in links' header, Astra will automatically sort the list of URLs

according to the number of incoming links, and then display the sorted listing in the List View

window 78."

7. Pogrebisky teaches "*In a Web communication network with user access via a plurality*

of data processor controlled interactive receiving display stations for displaying received

hypertext Web documents, transmitted from source sites on the Web, including at least one

display page containing text, images and a plurality of embedded hyperlinks, each hyperlink

being user activatable to access and display a respective linked hypertext Web document from

source sites on the Web, a method for controlling access activity from activated hyperlinks and

their respective Web document source sites comprising," see col. 1, line 66 – col. 2, line 9, "a

software package ('Web site analysis program') is provided which includes a variety of features

for facilitating the management and analysis of Web sites. In the preferred embodiment, the

program runs on a network-connected PC under the Windows® 95 or Windows® NT operating

system, and utilizes the standard protocols and conventions of the World Wide Web ('Web')."

Pogrebisky teaches "*prioritizing said plurality of embedded hyperlinks in a source Web*

document at a source site," see Figs. 4, 12, col. 16, lines 27-44, "FIG. 4 illustrates a split-screen

mode which allows the user to view a graphical representation of the Web site in an upper

window 76 while viewing a corresponding textual representation (referred to as 'List View') in a

lower window 78… Each line of text displayed in the List View window 78 represents one node

of the site map, and includes various information about the node," and col. 16, line 59 – col. 17,

line 7, "In addition, by clicking on the headers 82 of the separation bar 80, the user can view the

listed URLs in a sorted order," where the claimed "prioritizing" is the referenced "clicking on the

headers," the claimed "embedded hyperlinks in a source Web document" are the referenced

"listed URLs," the claimed "source site" is the referenced "client computer" of Fig. 12.

Pogrebisky teaches "*applying said prioritization in the determination of the order in*

which the Web documents linked to the activated embedded hyperlinks in said Web document are

to be accessed," see Fig. 4 and col. 16, line 59 – col. 17, line 7, "Likewise, whenever the user

selects a line in the List View window 78, the corresponding node is automatically highlighted in

the upper window 76... For example, if the user clicks on the 'in links' header, Astra will

automatically sort the list of URLs according to the number of incoming links, and then display

the sorted listing in the List View window 78" where the claimed "applying" is the referenced

"automatically sort[ing]," the claimed "order" is the referenced sorting "according to the number

of incoming links," the claimed "Web documents" are the referenced nodes in Fig. 4, e.g.

"proxy.pdf," and the claimed "hyperlinks" are "accessed" when the referenced "user selects a

line in the List View window."

8. Pogrebisky teaches "*The Web communication method of claim 7 further including the*

step of: inserting in each of said Web documents a plurality of hypertext markup language tags

each associated with each of said prioritized hyperlinks and indicative of the priority level of the

associated hyperlink," see Fig. 4, col. 6, lines 52-65, "During a document authoring stage, the

HTML codes (referred to as 'tags') are embedded within the informational content of the

document. When the Web document (or 'HTML document') is subsequently transmitted by a

Web server to a Web browser, the codes are interpreted by the browser and used to parse and

display the document," and col. 16, line 59 – col. 17, line 7, "In addition, by clicking on the

headers 82 of the separation bar 80, the user can view the listed URLs in a sorted order," where

the claimed "tag" could be the tag <A HREF="URL">, which is "associated with each...

hyperlink," and "indicat[es]" the priority of the hyperlinks when they are sorted by the "URL"

column.

9. Pogrebisky teaches "*The Web communication method of claim 8 further including the*

step of enabling an interactive user at the source site of a Web document to designate a priority

level for each of the hyperlinks," see Fig. 4 and col. 16, line 59 – col. 17, line 7, "by clicking on

the headers 82 of the separation bar 80, the user can view the listed URLs in a sorted order."

10. Pogrebisky teaches "*The Web communication method of claim 9 wherein said step of*

designating a priority level for each of said hyperlinks may be applied to change any previously

designated priority levels for said hyperlinks," see Fig. 4 and col. 16, line 59 – col. 17, line 7,

"For example, if the user clicks on the 'in links' header, Astra will automatically sort the list of

URLs according to the number of incoming links, and then display the sorted listing in the List

View window 78."

11. Pogrebisky teaches "*The Web communication method of claim 10 wherein said step*

of changing any previously designated priority levels is applicable to change the priority levels

in previously distributed copies of said Web document," see Fig. 4 and col. 16, line 59 – col. 17,

line 7, "For example, if the user clicks on the 'in links' header, Astra will automatically sort the

list of URLs according to the number of incoming links, and then display the sorted listing in the

List View window 78."

17. Pogrebisky teaches "*A Web hypertext document including at least one display page*

containing text, images and a plurality of embedded hyperlinks, each hyperlink being user

activatable to access and display a respective linked hypertext Web document from source sites

on the Web further including," see col. 2, lines 10-26, "the program includes Web site scanning

routines which use conventional webcrawling techniques to gather information about the content

objects (HTML documents, GIF files, etc.) and links of a Web site via a network connection."

Pogrebisky teaches "*a hypertext markup language tag associated with each embedded*

hyperlink indicating the priority of each hyperlink in the determination of the order in which the

Web documents linked to the activated embedded hyperlinks in said Web document are to be

accessed," see Fig. 4, col. 6, lines 52-65, "During a document authoring stage, the HTML codes

(referred to as 'tags') are embedded within the informational content of the document. When the

Web document (or 'HTML document') is subsequently transmitted by a Web server to a Web

browser, the codes are interpreted by the browser and used to parse and display the document,"

and col. 16, line 59 – col. 17, line 7, "In addition, by clicking on the headers 82 of the separation

bar 80, the user can view the listed URLs in a sorted order," where the claimed "tag" could be

the tag <A>, which is "associated with" a hyperlink, i.e. <A HREF="URL">, and which

"indicat[es]" the priority of the hyperlink when they are sorted by the "URL" column.

18. Pogrebisky teaches "*The Web document of claim 17 wherein said Web document is a*

source Web document at a source Web site," see col. 18, lines 42-52, "The Web servers 112

may, for example, run on a single computer, run on multiple computers located at a single

geographic location (which may, but need not, be the location of the client computer 92."

19. Pogrebisky teaches "*The source Web document of claim 18 further including means*

for changing the priority indication in each of said tags," see Fig. 4 and col. 16, line 59 – col. 17,

line 7, "by clicking on the headers 82 of the separation bar 80, the user can view the listed URLs

in a sorted order."

20. Pogrebisky teaches "*The source Web document of claim 19 further including means*

for applying changes in any previously designated priority levels to the priority levels in

previously distributed copies of said source Web document," see Fig. 4 and col. 16, line 59 – col.

17, line 7, "For example, if the user clicks on the 'in links' header, Astra will automatically sort

the list of URLs according to the number of incoming links, and then display the sorted listing in

the List View window 78."

21. Pogrebisky teaches "*A computer program comprising a computer useable medium*

having a computer readable program for controlling access activity from activated hyperlinks

and their respective Web document source sites in a World Wide Web (Web) communication

network with user access via a plurality of data processor controlled interactive receiving

display stations for displaying received hypertext Web documents, transmitted from source sites

on the Web, including at least one display page containing text, images and a plurality of

embedded hyperlinks, each hyperlink being user activatable to access and display a respective

linked hypertext Web document from source sites on the Web, wherein the computer readable

program when executed on a computer causes the computer to," see col. 1, line 66 – col. 2, line

9, "a software package ('Web site analysis program') is provided which includes a variety of

features for facilitating the management and analysis of Web sites. In the preferred embodiment,

the program runs on a network-connected PC under the Windows® 95 or Windows® NT

operating system, and utilizes the standard protocols and conventions of the World Wide Web

('Web')."

Pogrebisky teaches "*prioritize said plurality of embedded hyperlinks in a source Web*

document at a source site," see Figs. 4, 12, col. 16, lines 27-44, "FIG. 4 illustrates a split-screen

mode which allows the user to view a graphical representation of the Web site in an upper

window 76 while viewing a corresponding textual representation (referred to as 'List View') in a

lower window 78… Each line of text displayed in the List View window 78 represents one node

of the site map, and includes various information about the node," and col. 16, line 59 – col. 17,

line 7, "In addition, by clicking on the headers 82 of the separation bar 80, the user can view the

listed URLs in a sorted order," where the claimed "source site" is the referenced "client

computer" of Fig. 12, the claimed "prioritizing" is the referenced "clicking on the headers," and

the claimed "embedded hyperlinks in a Web document" are the referenced "listed URLs."

Pogrebisky teaches "*and apply said prioritization in the determination of the order in*

which the Web documents linked to the activated embedded hyperlinks in said Web document are

to be accessed," see Fig. 4 and col. 16, line 59 – col. 17, line 7, "Likewise, whenever the user

selects a line in the List View window 78, the corresponding node is automatically highlighted in

the upper window 76… For example, if the user clicks on the 'in links' header, Astra will

automatically sort the list of URLs according to the number of incoming links, and then display

the sorted listing in the List View window 78" where the claimed "applying" is the referenced

"automatically sort[ing]," the claimed "order" is the referenced sorting "according to the number

of incoming links," the claimed "Web documents" are the referenced nodes in Fig. 4, e.g.

"proxy.pdf," and the claimed "hyperlinks" are "accessed" when the referenced "user selects a

line in the List View window."

22. Pogrebisky teaches "*The computer program of claim 21, wherein the computer*

program further causes the computer to: insert in each of said Web documents a plurality of

hypertext markup language tags each associated with each of said prioritized hyperlinks

indicative of the priority level of the associated hyperlink," see Fig. 4, col. 6, lines 52-65,

"During a document authoring stage, the HTML codes (referred to as 'tags') are embedded

within the informational content of the document. When the Web document (or 'HTML

document') is subsequently transmitted by a Web server to a Web browser, the codes are

interpreted by the browser and used to parse and display the document," and col. 16, line 59 –

col. 17, line 7, "In addition, by clicking on the headers 82 of the separation bar 80, the user can

view the listed URLs in a sorted order," where the claimed "tag" could be the tag <A

HREF="URL">, which is "associated with each... hyperlink," and "indicat[es]" the priority of

the hyperlinks when they are sorted by the "URL" column.

23. Pogrebisky teaches "*The computer program of claim 22, wherein the computer

program further causes the computer to enable an interactive user at the source site of a Web

document to designate a priority level for each of the hyperlinks,*" see Fig. 4 and col. 16, line 59

– col. 17, line 7, "by clicking on the headers 82 of the separation bar 80, the user can view the

listed URLs in a sorted order."

24. Pogrebisky teaches "*The computer program of claim 23, wherein the computer

program further causes the computer to enable said designating a priority level for each of said

hyperlinks are enabled to change any previously designated priority levels for said hyperlinks,*"

see Fig. 4 and col. 16, line 59 – col. 17, line 7, "For example, if the user clicks on the 'in links'

header, Astra will automatically sort the list of URLs according to the number of incoming links,

and then display the sorted listing in the List View window 78."

25. Pogrebisky teaches "*The computer program of claim 23, wherein the computer

program further causes the computer to change priority levels of previously designated priority

levels so as to change the priority levels in previously distributed copies of said Web document,*"

see Fig. 4 and col. 16, line 59 – col. 17, line 7, "For example, if the user clicks on the 'in links'

header, Astra will automatically sort the list of URLs according to the number of incoming links,

and then display the sorted listing in the List View window 78."

(10) Response to Argument

<u>Claims 1-6</u>

As per Applicant's argument that claims 1-6 are statutory under 35 U.S.C. 101, the

Examiner respectfully disagrees. A system claim that does not recite at least one hardware

element is not statutory. The "means" of claims 1-6 are not hardware. Applicant argues that the

claimed "means" could be the host server source site 63 of Fig. 2, described at p. 10, ll. 14-25.

That is one interpretation, but not the only one, since the specification does not explicitly define

the claimed "means." At p. 11, ll. 20-23, the specification states that the "prioritizing" is

performed by means "at the source host server," not by the server itself. The specification gives

no indication that the "means... at the source host server" cannot be software. Thus, claims 1-6

are not statutory.

<u>Claims 17-20</u>

As per Applicant's argument that claims 17-20 are statutory under 35 U.S.C. 101, the

Examiner respectfully disagrees. Nonfunctional descriptive material is not statutory. The

HTML tag of claims 17-20 is nonfunctional descriptive material. The Applicant argues that the

claim provides a practical utility and a tangible result, implying that it is an abstract idea, which

requires a useful, concrete, and tangible result. The operative word here is "result." An HTML

tag does not produce a result, even if stored on a storage medium, which this tag is not. Thus,

claims 17-20 are not statutory.

<u>Claims 21-25</u>

As per Applicant's argument that claims 21-25 are statutory under 35 U.S.C. 101, the

Examiner respectfully disagrees. A computer readable medium that embodies carrier waves is

not statutory. The "computer useable medium" of claims 21-25 is a computer readable medium.

As with the "means" of claim 1, the specification does not define "computer useable medium."

Thus, the Examiner must apply the broadest reasonable interpretation to the term. As is

commonly understood in the art, computer useable (readable) mediums generally include non-

statutory carrier waves. Thus, claims 21-25 are not statutory.

Independent Claims 1, 7, and 21

As per Applicant's argument that Pogrebisky does not teach "*prioritizing said plurality of*

embedded hyperlinks in a source Web document at a source site" as in claims 1, 7, and 21, the

Examiner respectfully disagrees. Specifically, the Examiner cited Figs. 4, 12, col. 16, lines 27-

44, "FIG. 4 illustrates a split-screen mode which allows the user to view a graphical

representation of the Web site in an upper window 76 while viewing a corresponding textual

representation (referred to as 'List View') in a lower window 78… Each line of text displayed in

the List View window 78 represents one node of the site map, and includes various information

about the node," and col. 16, line 59 – col. 17, line 7, "In addition, by clicking on the headers 82

of the separation bar 80, the user can view the listed URLs in a sorted order," where the claimed

"prioritizing" is the referenced "clicking on the headers," the claimed "embedded hyperlinks in a

source Web document" are the referenced "listed URLs," the claimed "source site" is the

referenced "client computer" of Fig. 12.

The claimed "prioritizing" corresponds to the referenced "clicking on the headers," and

that prioritization is then applied (the next limitation) when the list of hyperlinks are "sorted"

according to the clicked header. Applicant argues that Pogrebisky does not teach "prioritizing…

hyperlinks" because Pogrebisky ultimately sorts the links, and sorting is different from

prioritizing (Appeal Brief p. 14). This is incorrect. The American Heritage Dictionary of the

English Language, Fourth Edition, defines "prioritize" as "to put things in order of importance."

It defines "sort" as "to arrange according to class, kind, or size." Thus, if a user were to "sort"

the list of links in Pogrebisky according to the headers 82 of Fig. 4, he would be putting them in

the order of importance to him, which is the definition of prioritizing. Thus, Pogrebisky teaches

"prioritizing... hyperlinks in a source Web document."

As per Applicant's argument that Pogrebisky does not teach "*applying said prioritization*

in the determination of the order in which the Web documents linked to the activated embedded

hyperlinks in said Web document are to be accessed" as in claims 1, 7, and 21, the Examiner

respectfully disagrees. Specifically, the Examiner cited Fig. 4 and col. 16, line 59 – col. 17, line

7, "Likewise, whenever the user selects a line in the List View window 78, the corresponding

node is automatically highlighted in the upper window 76... For example, if the user clicks on

the 'in links' header, Astra will automatically sort the list of URLs according to the number of

incoming links, and then display the sorted listing in the List View window 78" where the

claimed "applying" is the referenced "automatically sort[ing]," the claimed "order" is the

referenced sorting "according to the number of incoming links," the claimed "Web documents"

are the referenced nodes in Fig. 4, e.g. "proxy.pdf," and the claimed "hyperlinks" are "accessed"

when the referenced "user selects a line in the List View window."

Applicant argues that Pegrobisky has "little to do with the priority of the order in which

the Web documents linked to hyperlinks embedded in Web documents are to be accessed"

(Appeal Brief p. 14). First, it appears that Applicant interprets the limitation "prioritizing...

embedded hyperlinks in a source Web document" to mean that the hyperlinks are rearranged

(prioritized) <u>within</u> the "Web document" itself. This is but one interpretation of the phrase. It

can also mean that the "embedded hyperlinks in a source Web document" are prioritized

somewhere else. The claim does not specify <u>where</u> the hyperlinks are prioritized, so long as it

happens at the "source site." In Pogrebisky, the links are prioritized in the interface of Fig. 4,

which is at the "source site" (see "client computer" of Fig. 12). Nothing in the claims requires

that the links be prioritized within the "source Web document" itself.

Second, the claim does not say <u>who</u> will access the Web documents, or that they are ever

accessed. The claim simply puts the hyperlinks in some kind of order, hoping that someone will

click on the first link, then the second, and so on. But it does not claim that someone ever does.

In Pogrebisky, the user prioritizes by clicking on a header 82, the program applies that

prioritization by automatically sorting the list according to the clicked header, then the

user/webmaster can access the links in the prioritized order. This sequence clearly reads on the

limitation "*applying said prioritization in the determination of the order in which the Web*

documents linked to the activated embedded hyperlinks in said Web document are to be

accessed."

As a final note, the claimed "source site" corresponds to the referenced "client computer"

of Fig. 12. According to the preambles of the independent claims, the "source sites" transmit

"hypertext Web documents." In Pogrebisky, a webmaster uses the Astra program to analyze a

website (see the Background of the Invention and Fig. 12) via a user interface (see Fig. 4).

According to one interpretation of "source site," as in Pogrebisky, the client 92 of Fig. 12 (the

claimed "source site") transmits a website (the claimed "hypertext Web document") to the user

via the interface in Fig. 4. Thus, even if the client does not later transmit the analyzed website to

the server 112, which the Examiner does not concede, the client 92 is still a "source site" as

currently claimed because it transmits websites.

Independent Claim 17

As per Applicant's argument that Pogrebisky does not teach "*a hypertext markup*

language tag associated with each embedded hyperlink indicating the priority of each hyperlink

in the determination of the order in which the Web documents linked to the activated embedded

hyperlinks in said Web document are to be accessed" as in claim 17, the Examiner respectfully

disagrees. Specifically, the Examiner cited Fig. 4, col. 6, lines 52-65, "During a document

authoring stage, the HTML codes (referred to as 'tags') are embedded within the informational

content of the document. When the Web document (or 'HTML document') is subsequently

transmitted by a Web server to a Web browser, the codes are interpreted by the browser and used

to parse and display the document," and col. 16, line 59 – col. 17, line 7, "In addition, by clicking

on the headers 82 of the separation bar 80, the user can view the listed URLs in a sorted order,"

where the claimed "tag" could be the tag <A HREF="URL">, which is "associated with each…

hyperlink," and "indicat[es]" the priority of the hyperlinks when they are sorted by the "URL"

column of Pogrebisky's Fig. 4. The "*determination of the order in which the Web documents*

linked to the activated embedded hyperlinks in said Web document are to be accessed" has been

discussed above with reference to claims 1, 7, and 21.

Applicant has used very broad language in this claim, such as "associated with" and

"indicating." There is nothing in the claim that requires the tag to include a special code, or to be

in some way a "custom" tag. Thus, whenever the user/webmaster in Pogrebisky sorts the list of

hyperlinks by URL (their priority), he is using the <A HREF="URL"> tag to determine the order

in which the hyperlinks will be displayed.

Claims 3, 8, and 22

These claims mirror the language of claim 17, discussed above, and the same arguments

apply here.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related

Appeals and Interferences section of this examiner's answer.

(12) Conclusion

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Aaron Sanders/

Examiner, Art Unit 2168

18 September 2008

Conferees:

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